

REMARKS

Claims 52-96 are pending in the Application.

Claims 52-96 stand rejected.

Claims 52-96 have been renumbered as Claims 19-63.

I. RENUMBERING OF CLAIMS

In Paper No. 3, Examiner has indicated that Claims should be renumbered beginning at Claim 19. This is consistent with a telephone communication received by Applicant's counsel from Examiner regarding this a several other of Applicant's patent applications that, like the present Application, are divisional applications of United States Patent Application Serial No. 09/787,473 ("the parent '473 patent application").

On or about April 11, 2003, Applicant amended the Claims to begin numbering the claims at Claim 19. *See* Supplemental Preliminary Amendment To Revise Claim Numbering, filed April 11, 2003. As shown above, the amended claims reflect this revised claim numbering. The Claims have also been amended to correct minor typographical errors in the Claims.

To avoid any confusion, Applicant will hereinafter refer to the claims under the revised claim numbers (*i.e.*, Claims 19-63, respectively).

II. PROVISIONAL OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

In Paper No. 3, the Examiner has provisionally rejected the claims under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending United States Patent Application Serial No. 09/810,150. Applicant traverses these rejections. However, to facilitate prosecution of the Application, Applicant hereby responds with the enclosed Terminal Disclaimer to moot these provisional rejections.

III. REJECTIONS UNDER 35 U.S.C. §§ 102(e) AND 103(a) OVER HADDON

The Examiner has rejected Claims 19-63 (formerly claims 52-96) under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,331,262 B1 to *Haddon et al.*

("Haddon"). Paper No. 3, at 3. In the alternative, the Examiner has rejected Claims 19-63 (formerly claims 52-96) under 35 U.S.C. § 103(a) as obvious over *Haddon*.

Applicant respectfully traverses these rejections. *Haddon* is not prior art for the claims of the present Application; thus, these rejections are improper and must be withdrawn.

As noted above, the present Application is a divisional application of the parent '473 patent application. The parent '473 patent application is the 35 U.S.C. § 371 national application of International Application Number PCT/US 99/21366, filed September 17, 1999. Filing Receipt, at 1. Accordingly, the parent '473 patent application has a filing date of September 17, 1999. M.P.E.P. § 1893.03(b). As the present Application is a divisional of the parent '473 patent application and the requirements of 35 U.S.C. § 120 have been satisfied, the effective filing date is at least the date of the filing of the parent '473 patent application. M.P.E.P. § 702. Thus, the effective filing date of the present Application is, at least, September 17, 1999. *Id.*

The patent application from which *Haddon* issued (United States Patent Application Serial No. 09/401,668, the "*Haddon* '668 application")) has a filing date of September 22, 1999. *See Haddon*, cover page. *Haddon* claims priority to Provisional United States Patent Application Serial Numbers 60/102,909 and 60/102,787, both filed on October 2, 1998 (collectively the "*Haddon* provisional applications"). *Id.*

As an initial matter, the *Haddon* '668 application was filed after the filing of the Applicant's parent '473 patent application. Thus, to the extent the *Haddon* '668 application adds new matter to the *Haddon* provisional applications, such new matter is not prior art to the present application. *See* M.P.E.P. § 2136.03(IV).

Putting the new matter issue aside, the *Haddon* '668 application and the *Haddon* provisional applications are further not prior art for the present Application because the present Application claims priority benefits to the following provisional applications:

- (1) Provisional United States Patent Application Serial Number 60/138,505, filed on June 10, 1999;
- (2) Provisional United States Patent Application Serial Number 60/106,918, filed on November 3, 1998; and

(3) Provisional United States Patent Application Serial Number 60/101,092, filed on September 18, 1998 (“the ‘092 provisional application”).

All of the pending independent claims and at least some, if not all, of the pending dependent claims in the present Application are fully supported by the ‘092 provisional application; thus, such supported pending claims have an effective filing date of September 18, 1998. *See* M.P.E.P. § 706.02. This effective filing date is before the filing dates of the *Haddon* ‘668 application and the *Haddon* provisional applications. Consequently, the *Haddon* ‘668 application and the *Haddon* provisional applications cannot be prior art to such claims under 35 U.S.C. § 102(e).

Applicant understands the Examiner may assert one or more of the dependent claims of the present Application are not fully supported by the ‘092 provisional application because, in Examiner’s view, each of those dependent claims includes a feature not disclosed in the ‘092 provisional application. To the extent such assertions can be made, Applicant notes that any such allegedly missing features of the dependent claims would likewise not be found in the *Haddon* ‘668 application and the *Haddon* provisional applications. Under such circumstance, the *Haddon* ‘668 application and the *Haddon* provisional applications would again not be prior art. *See* M.P.E.P. § 715.02.

In view of the foregoing, Applicant respectfully requests the Examiner withdraw the rejection of Claims 19-63 under 35 U.S.C. § 102(e) as being anticipated by *Haddon*, or, alternatively, under 35 U.S.C. § 103(a) as being obvious under *Haddon*.

CONCLUSION

As a result of the foregoing, it is asserted by Applicant that the remaining Claims in the Application are in condition for allowance, and respectfully request an early allowance of such Claims.

Applicant respectfully requests that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

RESPECTFULLY SUBMITTED,

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